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C/O CPA Global
900 Second Avenue South
Suite 600
MINNEAPOLIS, MN 55402

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SLIM TRABELSI, MICHELE BEZZI, and
GILLES MONTAGNON

Appeal 2017-000059
Application 13/471,078¹
Technology Center 2400

Before THU A. DANG, JAMES W. DEJMEK, and
SCOTT E. BAIN, *Administrative Patent Judges*.

Opinion for the Board filed by DEJMEK, *Administrative Patent Judge*.

Opinion dissenting filed by BAIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–6, 8–12, 14, 15, and 17–21.² Claims 7, 13, and 16 have been

¹ Appellants identify SAP SE as the real party in interest. App. Br. 1.

² In the Claims Appendix, Appellants include claims 22 and 23, indicating such claims are “New.” App. Br. 26–27. Additionally, in the Appeal Brief, Appellants include claims 22 and 23 in the Summary of Claimed Subject Matter and also include claim 22 in the arguments presented. *See, e.g.*, App. Br. 5, 11, 15, and 18. We are not apprised that an Amendment after Final Rejection was allowed and entered by the Examiner. Further, we note the Final Rejection from which this appeal is taken only relates to claims 1–6,

canceled. App. Br. 23–25. We have jurisdiction over the remaining pending claims under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Introduction

Appellants’ claimed invention is directed to reputation management. Spec. ¶ 1. According to the Specification, an issue with conventional reputation systems is that “consumers are more likely to provide positive feedback than negative feedback,” resulting in reputation scores that are skewed overly-high. Spec. ¶ 4. Thus, Appellants’ claimed invention monitors interactions between at least one service provider and at least one service consumer to extract negative feedback from the at least one service consumer’s interactions. Spec. ¶ 7. In response to receiving negative feedback, Appellants’ claimed invention (i.e., a reputation engine) will decrease the reputation score of the at least one service provider. Spec. ¶ 7. Additionally, the reputation score may increase over time in accordance with a determined growth rate. Spec. ¶ 7.

Claim 1 is representative of the subject matter on appeal and is reproduced below:

1. A system including instructions recorded on a non-transitory computer readable storage medium and executable by at least one processor, the system comprising:

- an evidence monitor configured to cause the at least one processor to monitor network interactions between at least one service provider and at least one service consumer during a time

8–12, 14, 15, and 17–21. Accordingly, we do not treat newly added claims 22 and 23 as being properly before the Board.

period and related to a service provided by the service provider over at least one computer network, to thereby extract interaction characteristics characterizing the network interactions from one or more databases, and further configured to cause the at least one processor to receive negative feedback from the at least one service consumer regarding a corresponding interaction of the network interactions; and

a reputation engine configured to cause the at least one processor to increase a reputation score of the at least one service provider during the time period in accordance with a growth rate, and calculated based on the interaction characteristics, as the network interactions occur during the time period, and further configured to cause the at least one processor to decrease the reputation score of the at least one service provider in response to the negative feedback and in accordance with a negative feedback response characteristic,

wherein the reputation score reflects a cumulative reputation of the service provider with respect to a trustworthiness of the service provider in providing the service to the at least one service consumer, and wherein the reputation engine is configured to calculate the reputation score within a range of minimum and maximum values, including automatically increasing the reputation score over time in the absence of negative feedback.

The Examiner's Rejection

Claims 1–6, 8–12, 14, 15, and 17–21 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 2–4.

Issue on Appeal

Did the Examiner err in finding Appellants' claimed invention is directed to an abstract idea and the recited claim limitations do not provide meaningful limitations to transform the abstract idea into patent-eligible subject matter?

ANALYSIS³

Appellants dispute the Examiner's finding that the pending claims are directed to patent-ineligible subject matter under 35 U.S.C. § 101. App. Br. 9–11; Reply Br. 3–4. In particular, Appellants assert the Examiner failed to make an evidentiary showing to establish a *prima facie* case of ineligibility. App. Br. 9–11. Further, Appellants argue the Examiner's finding that the Appellants' invention amounts to no more than an abstract idea is not reasonably tied to the facts of the case and/or improperly expands the concepts as to what the courts have identified as being abstract ideas. App. Br. 9–11; Reply Br. 3–4.

Contrary to Appellants' assertions, neither *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), nor the Board's holdings in *PNC Bank v. Secure Access, LLC*, Case No. CBM2014-00100 (PTAB Sept. 9, 2014) or *Ex Parte Renald Possion*, Appeal No. 2010-011084 (PTAB Feb. 27, 2015), stands for the proposition that Examiners *must* provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. There is no such requirement. *See, e.g.*, para. IV “July 2015 Update: Subject Matter Eligibility” to 2014 Interim Guidance on Subject Matter Eligibility (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being

³ Throughout this Decision, we have considered the Appeal Brief, filed January 15, 2016 (“App. Br.”); the Reply Brief, filed September 23, 2016 (“Reply Br.”); the Examiner's Answer, mailed July 25, 2016 (“Ans.”); and the Final Office Action, mailed February 20, 2015 (“Final Act.”), from which this Appeal is taken.

claimed) to be a *question of law*. Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings.”) (Emphasis added). Further, the Office did not change the standard in the May 4, 2016 Memorandum, *Formulating a Subject Matter Eligibility Rejection and Evaluating the Applicant’s Response to a Subject Matter Eligibility Rejection*. Evidence may be helpful in certain situations where, for instance, facts are in dispute. However, it is not always necessary. It is not necessary in this case.

Additionally, the Federal Circuit has repeatedly noted that “the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The court has, thus, held that the USPTO carries its procedural burden when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011). Thus, all that is required of the Office is that it set forth the statutory basis of the rejection, and the reference or references relied on, in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Jung*, 637 F.3d at 1362; *see also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (Section 132 “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).

The Supreme Court reiterated the framework set out in *Mayo Collaborative Services, v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012), for “distinguishing patents that claim . . . abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355. If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially-recognized exceptions (i.e., a law of nature, a natural phenomenon, or an abstract idea). If so, the second step is to determine whether any element, or combination of elements, amounts to significantly more than the judicial exception.

Here, the Examiner has analyzed sufficiently the pending claims using the *Mayo* two-step framework, in accordance with the Office’s guidance for determining subject matter eligibility.

On their face, independent claims 1, 11, and 14 fall within one of the statutory categories of patent eligibility. Claim 1 is directed to a system; claim 11 is directed to a method (i.e., process); and claim 14 is directed to a product. Additionally, we note the claim language further modifies the computer-readable medium as being “non-transitory.”

Although broadly falling within the statutory categories of patent eligibility, the Examiner finds the claims are directed to one of the judicially-recognized exceptions. *See* Final Act. 2–4; Ans. 3–10. In particular, the Examiner finds Appellants’ claimed invention is directed to the abstract idea of “a **reputation algorithm for a business/service.**” Final Act. 3. Additionally, the Examiner finds this determination applies to all of the pending claims and that the additional elements recited “amount(s) to no more than: **monitoring user activity which helps to build a more healthy**

reputation algorithm using the additional data which signifies [the] idea of reputation calculation.” Final Act. 3.

In particular, the Examiner explains the claimed reputation engine is merely configured to increase and/or decrease a reputation score with a growth rate based upon interactions occurring over a time period. Final Act. 3; Ans. 3–4. The Examiner further finds the calculation and updating of a reputation score using a computer processor to perform its basic functions do not render the concept any less abstract. Final Act. 3; Ans. 7.

Appellants dispute the claims are “directed to” calculating or increasing a reputation score. Reply Br. 5. Rather, Appellants assert the claims provide an “automated technique for collecting network data and executing a physical transformation thereof to obtain a desired result.” Reply Br. 5.

Appellants’ claimed invention is directed to “reputation management.” Spec. ¶ 1. According to the Specification, an issue with conventional reputation systems is that “consumers are more likely to provide positive feedback than negative feedback,” resulting in reputation scores that are skewed overly-high. Spec. ¶ 4. Thus, Appellants’ claimed invention monitors interactions between at least one service provider and at least one service consumer to extract negative feedback from the at least one service consumer’s interactions. Spec. ¶ 7. In response to receiving negative feedback, Appellants’ claimed invention (i.e., a reputation engine) will decrease the reputation score of the at least one service provider. Spec. ¶ 7. Additionally, the reputation score may increase over time in accordance with a determined growth rate. Spec. ¶ 7.

As claimed, an “evidence monitor” monitors network interactions (i.e., the exchange of messages/data) between at least one service provider and at least one service consumer to identify and extract interactions indicative of negative feedback from the at least one service consumer. The claims further recite a “reputation engine” that will decrease a reputation score in accordance with the receipt of negative feedback or increase the reputation score at a specified growth rate. Additionally, the reputation score is bounded by minimum and maximum values.

Our reviewing court has said that abstract ideas include “collecting information, including when limited to particular content.” *Elec. Power Grp., LLC v. Alstrom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Further, “merely presenting the results of abstract processes of collecting and analyzing information, without more (such as identifying a particular tool for presentation), is abstract as an ancillary part of such collection and analysis.” *Elec. Power*, 830 F.3d at 1354. Here, the claims are merely directed to steps of collecting information, analyzing the information, and using the results to compute a “reputation score,” which represents the cumulative result of the analyzed information, countered by a time-based growth rate and, thus, recites an abstract idea.

With respect to the second step of the *Alice* analysis, the Examiner does not find claims 1, 11, and 14 recite an inventive concept which transforms the abstract algorithm into a patent eligible invention. Final Act. 3–4; Ans. 4, 7–10; *see also Alice*, 134 S. Ct. at 2357 (“[W]e must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application. A claim that recites an abstract idea must

include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” (Internal citations omitted)). Additionally, “the use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter.” *FairWarning IP, LLC, v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings, LLC, v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014)).

In particular, the Examiner finds that “[a]nalyzing the claim as whole for an inventive concept,” the claims are simply a generic recitation of a computer processor and a reputation engine performing their basic functions. Final Act. 3. The Examiner further notes the determined result (i.e., the reputation) is not applied in any way or, more importantly, “is not being applied to improve a technology field, improve the performance of a computer, or any other particular machine or practical application.” Final Act. 3. Additionally, the Examiner explains the recited computer functions are well-understood, routine and conventional activities previously known to the industry. Ans. 7. Also, the Examiner finds the additional elements or combination of elements, as recited in the dependent claims “do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself.” Ans. 8–10.

Each of claims 1, 11, and 14, recites a non-transitory computer-readable medium containing instructions to execute monitoring communications (i.e., interactions) between a service provider and a service consumer and identifying negative feedback from the consumer to the provider and updating a reputation score accordingly. Thus, the claims

generically recite computing equipment that performs the recited algorithm and which is insufficient to transform the nature of the claim into a patent-eligible application. *See* Final Act. 3.

Similarly, we agree with the Examiner that the dependent claims do not transform the nature of the claims into patent-eligible subject matter. *See* Final Act. 3–4; Ans. 7–10. For instance, dependent claims 2, 3, 6, 8, 9, and 21 merely relate to a mathematical formula to be applied to the calculation of a reputation score (e.g., a redemption rate (claims 2 and 3), the applicable time period for using the extracted negative feedback (claim 6), the weighting of the various parameters (claims 9 and 10), and the parameters used in determining a reputation score (claim 21)). Claim 10 outputs the reputation score upon request by the user and claims 4 and 5 merely recite the interactions examined (claim 4) and which process (i.e., the evidence monitor) calculates the negative feedback and provides the result to another process (i.e., reputation engine). These limitations are similarly recited in dependent claims 12, 15, and 17–20. Contrary to Appellants’ assertions (*see* App. Br. 14–15), we agree with the Examiner and do not find the recited steps recite a physical transformation of data or recite meaningful limitations beyond generally linking the use of an abstract idea to the field of reputation management sufficient to transform the nature of the claims into patent-eligible subject matter.

Additionally, Appellants assert if the pending claims were granted, “their scope would not broadly pre-empt, and there would be substantial non-infringing uses of, the field of ‘a reputation algorithm for a business service.’” App. Br. 14. Although Appellants concede the Examiner’s analysis is consistent with USPTO Guidelines (referencing the May 2016

Memorandum), Appellants argue the Guidelines are inconsistent with the overall eligibility inquiry and superseded by intervening case law. Reply Br. 10. We disagree.

“[W]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *FairWarning IP*, 829 F.3d at 1098 (quoting *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 701, 193 (2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). Further, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa*, 788 F.3d at 1379. Further, Appellants’ reliance on *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) (*see* Reply Br. 8–13) does not compel a different result.

In *McRO*, the court held the claims were not directed to an abstract idea, but rather to a specific asserted improvement in computer animation. *McRO*, 837 F.3d at 1314. There, the court distinguished the traditional process of subjective determinations of human animators from the newly claimed method of applying specific, limited mathematical rules to achieve a similar result (i.e., realistic animations of facial expressions for lip-synchronization). *McRO*, 837 F.3d at 1313–16.

However, in *FairWarning IP* (decided after *McRO*), the court found “FairWarning’s claims merely implement an old practice in a new

environment.” *FairWarning IP*, 829 F.3d at 1094. In particular, the court found FairWarning’s use of a computer, rather than the claimed rules, improved the existing process by allowing the automation of tasks.

FairWarning IP, 829 F.3d at 1094–95. Additionally, the court found the “lack of preemption does not save these claims.” *FairWarning IP*, 829 F.3d at 1098 (citing *Ariosa*, 788 F.3d at 1379).

Accordingly, contrary to Appellants’ assertions, we find the Examiner’s analysis is consistent with both USPTO Guidelines and current case law.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 101 as not being directed to patent-eligible subject matter. For similar reasons, we also sustain the Examiner’s rejection under 35 U.S.C. § 101 of independent claims 11 and 14, which recite similar limitations. Additionally, for the reasons discussed *supra* with regard to dependent claims 2–6, 8–10, 12, 15, and 17–21, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of these claims.

DECISION

We affirm the Examiner’s decision rejecting claims 1–6, 8–12, 14, 15, and 17–21 under 35 U.S.C. § 101.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SLIM TRABELSI, MICHELE BEZZI, and
GILLES MONTAGNON

Appeal 2017-000059
Application 13/471,078
Technology Center 2400

Before THU A. DANG, JAMES W. DEJMEK, and
SCOTT E. BAIN, *Administrative Patent Judges*.

BAIN, *Administrative Patent Judge*, dissenting.

DISSENTING OPINION

I respectfully dissent from the Majority’s decision affirming the Examiner’s rejection of claims 1–6, 8–12, 14, 15, and 17–21 under 35 U.S.C. § 101.

The Examiner finds “the recited steps of [claim 1] describe ‘calculate the reputation score’ and [therefore] this is an abstract idea that is not meaningfully different than the abstract ideas drawn to economic concepts identified in *Alice*, *Bilski*, and *Fort Properties*.” Ans. 3–4 (emphasis added); *see also* Final Act. 3 (the claims “are directed to the abstract idea of a reputation algorithm for a business/service”). These cursory findings appear to be the extent of the Examiner’s analysis under the first step in the two-step framework reiterated in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S.

Ct. 2347 (2014) for determining whether a claim is directed to ineligible subject matter.

Under *Alice*, the first step in the analysis is to “determine whether the claims at issue are directed to” one of the “patent-ineligible concepts,” namely, “laws of nature, natural phenomena, and abstract ideas.” *Id.* at 2355. Importantly, regarding the first step, we do not “simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim . . . involves a law of nature and/or natural phenomenon” or abstract idea at some level, but rather we ask whether each “claim[], considered in light of the specification . . . as a whole is directed to excluded subject matter.” *Enfish, LLC v. Microsoft Corporation*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (emphasis added). If the Examiner has not established a *prima facie* case as to the first step (i.e., that the claims are directed to an abstract idea) then we do not reach the second step of the *Alice* framework.⁴

I am persuaded by Appellants’ argument that the Examiner’s “generic, conclusory statement of [claim 1] not being meaningfully different” from the (uncited) claims in *Alice*, *Bilski* and *Fort Properties*, Ans. 4, “could be made in any [§] 101 rejection” and is not sufficiently “tied to the facts [and claims of this] case.” Reply Br. 4. Claim 1, for example, does not simply recite the general concept of “calculat[ing] a reputation score” as the Examiner

⁴ The second step in the *Alice* analysis is to consider the elements of the claims “individually and ‘as an ordered combination’ to determine whether the additional elements transform the nature of the claim into a patent-eligible application.” *Enfish, LLC*, 822 F.3d at 1334. The Examiner’s findings on the record before us, as well as the Majority Opinion, tend to focus on this second step.

concludes, Ans. 4, unless one reduces the lengthy claim to such a high level of abstraction that the first part of the *Alice* test essentially is rendered moot. *See Enfish, LLC*, 822 F.3d at 1334–1335 (Although “[t]he Supreme Court has not established a definitive rule to determine what constitutes an ‘abstract idea’ sufficient to satisfy the first step of the *Mayo/Alice* inquiry . . . the first step in the inquiry is a meaningful one”); *Alice Corp. Pty. Ltd.*, 134 S.Ct. at 2354 (“[W]e tread carefully in construing this [abstract idea] exclusionary principle lest it swallow all of patent law.”). Moreover, “an invention is not,” the Supreme Court has cautioned, “rendered ineligible for patent simply because it involves an abstract *concept*.” *Id.* (emphasis added).

Claim 1, rather, recites a system that invokes a concrete *application* of elements, including interactions of particular network components in particular, concrete ways utilizing particular timing, with concrete results. *See supra* Maj. Op. at 2–3 (claim 1). Appellants’ Specification further explains that the claims are directed to improving “*accura[cy]*,” “*efficien[cy]*,” and “*scalab[ility]*” of prior (computer-based) systems used by service providers to obtain feedback from their customers, not merely the abstract concept of calculating a score. Spec. 1–2 (emphasis added); *see Enfish, LLC*, 822 F.3d at 1335 (claims are to be “considered in light of the specification” to determine whether they are “directed to excluded subject matter”) (citing *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). Appellants’ claimed invention further is directed to addressing the inaccuracies and errors in the aforementioned computer systems caused by the use of “automated software agents” or “bots.” Spec. 1–2; *Enfish, LLC*, 822 F.3d at 1335 (“whether the claims are

directed to an improvement to computer functionality versus being directed to an abstract idea” is relevant “even at the first step of the *Alice* analysis”).⁵

The fact that Appellants’ invention results in (among other things) the manipulation of data, including a reputation score, does not render it ineligible subject matter. *See McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1307–08, 1314–15 (Fed. Cir. 2016) (claim directed to method for manipulating digital animation data is not an “abstract idea”). Like claim 1 in *McRO*, Appellants’ claim 1 does not broadly recite the “result” of adjusted data, but a system and rules for accomplishing it, and the dependent claims add further such elements. *See McRO, Inc.*, 837 F.3d at 1314–16; *see also Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348–49 (Fed. Cir. 2016) (contrasting mere “methods of organizing human activity” with implementations of such methods that include “improvement in computer capabilities,” and “defer[ring]” the “close call” of whether the claimed “filtering scheme” implemented on a network satisfied *Alice* step one).

In my view, the record before us lacks sufficient explanation and support for the Examiner’s conclusion that claim 1, let alone any of the other claims on appeal not discussed by the Examiner, is abstract. *See* “July 2015 Update: Subject Matter Eligibility” to 2014 Interim Guidance on Subject

⁵ The mere “abstract idea of calculating a score” is, by contrast, illustrated by considering dependent claim 9 hypothetically without the limitations of its base claim 1. Claim 9 recites “increas[ing] the reputation score based on the equation

$$r_{n+1} = \lambda(r_n + 1) \left(1 - \frac{(1 - \lambda)(r_n + 1)}{2\lambda} \right) - \beta(r_n, w) - 1$$

in which *r* represents the reputation score” App. Br. 23 (Claims App.); *cf. Diamond v. Diehr*, 450 U.S. 175, 188–189 (1981).

Matter Eligibility (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014) at 6 (Examiner must provide “reasoned rationale” that “clearly articulat[es] the reason(s)” the claims are abstract); *see also* “Memorandum: Formulating a Subject Matter Eligibility Rejection and Evaluating the Applicant’s Response to a Subject Matter Eligibility Rejection” (May 4, 2016) at 1 (“the rejection should identify the abstract idea *as it is recited* . . . and *explain why* it corresponds to a concept that the courts have identified as an abstract idea”) (emphasis added). Independent claims 11 (method) and 14 (computer program product) differ from claim 1 yet, on the record before us, the Examiner does not address these claims separately, nor does the Examiner address any of the additional limitations recited in any of the dependent claims. *See id.* at 2 (“the eligibility of *each claim* should be evaluated as a whole using the [*Alice*] two-step analysis detailed in the Interim Eligibility Guidance”) (emphasis added). Rather, as Appellants argue, the record before us simply includes “a blanket rejection under 35 U.S.C. § 101 for all pending claims.” App. Br. 4; Final Act. 2.

Although the Majority Opinion goes well beyond the Examiner’s findings and analysis on the record before us, in my view even the additional analysis by the Majority does not satisfy step one of *Alice*, for the reasons set forth above. I would return the focus in this case to whether these claims are novel and nonobvious (and satisfy the other statutory requirements), for the Examiner to determine in the event of further prosecution.⁶

⁶ The Examiner previously withdrew anticipation and obviousness rejections in favor of the present (perhaps more expedient) § 101 rejection shortly after the *Alice* decision was rendered. *See* Non-final Office Act. (July 28, 2014).

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Accordingly, I would reverse the Examiner's rejection under
35 U.S.C. § 101.